

ENTERED

February 07, 2017

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

EXXON MOBIL CORPORATION,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action Nos. H-10-2386, H-11-1814

SECOND AMENDED SCHEDULING AND DOCKET CONTROL ORDER

This Second Amended Scheduling and Docket Control Order (“Order”) controls the schedule for the Phase 2 discovery and pre-trial and trial work on these two cases. Phase 2 will address and resolve the following issues:

- (a) the allocation of past and future response costs among the responsible parties under 42 U.S.C. § 9613(f), and related technical or historical issues;
- (b) whether the costs claimed were or are necessary costs of response consistent with the National Contingency Plan (40 C.F.R. Part 300 *et. seq.*);
- (c) additional cost recoverability issues;
- (d) whether any claims are time-barred in whole or in part under the applicable statute of limitations; and
- (e) whether the United States is entitled to any relief on its counterclaims for contractual indemnification based on Plancor lease agreements.

The scope of written, fact witness and expert witness discovery for Phase 2 is limited to items (b) through (e), except as otherwise noted below. However, nothing in this order precludes the further deposition of any expert serving a supplemental report, regardless of the issues that report addresses.

Any prior stipulation and order or protective order governing Phase 1 discovery conducted applies to any Phase 2 discovery. Any issues that the parties previously agreed or contended should be excluded from Phase 1 and reserved for a subsequent phase of this litigation is within the scope of Phase 2.¹

The following scheduling provisions apply to Phase 2, unless otherwise indicated:

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|-----|-------------------|--|
| 1. | Not applicable | MOTIONS TO ADD NEW PARTIES |
| 2. | Not applicable | MOTIONS FOR LEAVE TO AMEND PLEADINGS |
| 3. | Not applicable | INITIAL DISCLOSURES |
| 4a. | October 15, 2015 | DISCOVERY
The date of commencement of Phase 2 discovery. ² |
| 4b. | December 1, 2015 | Date for Plaintiff's updated statement of claimed costs pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii) |
| | February 12, 2016 | Status Conference will be held at 8:30 a.m. in Courtroom 11-B, United States Courthouse, 515 Rusk, Houston, Texas. |

¹ To the extent either party was served interrogatories, requests for documents or requests for admissions during Phase 1, but the party objected on the grounds that the discovery request solely concerned a Phase 2 issue, and did not substantively respond, these prior discovery requests are cancelled. The party serving these requests has the right to re-serve the same requests after discovery for Phase 2 begins.

² Unless otherwise stipulated or ordered by the court, a party may serve on any other party 50 interrogatories per side in Phase 2. The parties will have 40 days after service of any interrogatories, requests for documents, or requests for admissions to object or substantively respond in writing.

- 5a. June 15, 2016 **EXPERTS**
The deadline for the Proponent to designate any expert witnesses on any Phase 2 issue in writing.
- 5b. June 23, 2016 The deadline for the Proponent to provide the expert report(s) required by Rule 26(a)(2) for any designated expert witnesses.
- August 15, 2016 Status Conference (telephonic) will be held at 3 p.m.
- 5c. September 15, 2016 The deadline for the Opponent to designate any rebuttal expert witnesses with respect to any expert issue raised by any of the Proponent's expert witnesses.
- 5d. September 22, 2016 The deadline for the Opponent to provide rebuttal expert report(s) required by Rule 26(a)(2) for any rebuttal expert witnesses.
- 5e. October 3, 2016 The start date for taking depositions of expert witnesses.
- October 26, 2016 Status Conference (telephonic) will be held at 4:30 p.m.
- 5f. January 30, 2017 Deadline for either party to file any supplemental expert report. (Phases One and Two).
- February 3, 2017 Status Conference will be held at 8:30 a.m. in Courtroom 11-B, United States Courthouse, 515 Rusk, Houston, Texas
- 5g. February 15, 2017 Deadline for rebuttal report of Defendant regarding National Contingency Plan ("NCP") issues.
- 5h. March 8, 2017 Deadline for rebuttal report of Plaintiff regarding NCP issues.
- 5i. March 31, 2017 Deadline for sur-rebuttal report of Defendant regarding NCP issues.
6. April 14, 2017 **COMPLETION OF DISCOVERY**
Written discovery requests are not timely if they are filed so close to this deadline that under this Order the written response would not be due until after this deadline.

7a. May 30, 2017

DISPOSITIVE MOTIONS

The deadline for the parties to file any dispositive motion regarding any Phase 1 issue that has not been resolved by the Court, together with any Phase 2 issue.

7b. July 15, 2017

The deadline for a response in opposition to any motion or motion for partial summary judgment filed by the other party.

7c. August 11, 2017

The deadline for a reply to any response in opposition filed by the other party.

7d. September 15, 2017, or as set

Oral argument hearing to be held in Courtroom 11-B at 8:30 a.m. on any dispositive motion either party files.

8a. October 13, 2017

PRETRIAL MOTIONS DEADLINE

The deadline for the parties to file any pretrial motion

8b. November 10, 2017

The deadline for a response in opposition to any pretrial motion.

9. January 12, 2018

JOINT PRETRIAL ORDER

The Joint Pretrial Order shall contain the pretrial disclosures required by Rule 26(a)(3). Plaintiff is responsible for timely filing the complete Joint Pretrial Order. Failure to file a Joint Pretrial Order timely may lead to dismissal or other sanction in accordance with the applicable rules.

10. February 7, 2018

DOCKET CALL

Docket Call will be held at 2:00 p.m. in Courtroom 11-B, United States Courthouse, 515 Rusk, Houston, Texas. No documents filed within 7 days of the Docket Call will be considered. Pending motions may be ruled on at docket call, and the case will be set for trial as close to the docket call as practicable.

SIGNED on February 3, 2017, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge